

No. 6:11-cv-00135-MAC

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
\_\_\_\_\_  
DIVISION

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RANDALL WAYNE MAYS  
*Petitioner,*

v.

RICK THALER,  
Director, Texas Department of Criminal Justice,  
Institutional Division,

*Respondent.*

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Petition for Writ of Habeas Corpus  
from a Capital Murder Conviction in the  
District Court of Henderson County, Texas

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**JOHN E. WRIGHT'S MOTION TO WITHDRAW AS COUNSEL  
FOR PETITIONER : CONFLICT OF INTEREST**

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**JOHN E. WRIGHT**  
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Court-Appointed Attorney for the Petitioner

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TO THE HONORABLE U.S. DISTRICT COURT:

NOW COMES John E. Wright, Movant, one of the court appointed attorneys for the Petitioner, and respectfully submits his Motion to Withdraw as Counsel:

1. Movant was appointed to represent Petitioner on March 24, 2011, some eight days after Petitioner's state habeas petition was disposed of by the Texas Court of Criminal Appeals by order signed on March 16, 2011. *Ex parte Mays*, (Tex. Crim. App. 03.16.2011) No. WR-75,105-01.
2. Upon reflection, Movant reluctantly asks the Court to permit him to withdraw as counsel for Mr. Mays in this case for the reasons set out below.

3. During Mr. Mays' trial, Movant was appointed by the District Court of Henderson County Texas to handle the direct appeal of Mr. May's capital murder conviction and death sentence.
4. Movant assisted trial counsel during the charge conferences at the guilt and punishment phases of the trial.
5. Movant's assistance included the suggestion of a series of objections to the punishment charge, which trial counsel urged upon the trial court, and secured a ruling thereon.
6. State habeas counsel, for Mr. Mays, Jeff Haas, also one of Mays' federal habeas counsel in this proceeding, has asserted, at state habeas, that Movant was guilty of ineffective assistance of counsel for failure to make a timely and specific objection to the omission in the punishment charge of certain language that Texas law requires to be included in it.
7. The omitted language would have told the sentencing jurors that they need not agree on what particular evidence supported an affirmative answer to the special issue on mitigating circumstances.
8. Movant's professional opinion is that the objections that were made to the punishment charge were adequate to raise this issue in the trial court; the Texas Court of Criminal Appeals has now ruled otherwise in its opinion in Mr. Mays' direct appeal. See *Mays v. State*, 318 S.W.3d 368 (2010)
9. If Movant were to continue in his representation of Mr. Mays in this proceeding, he would be obliged to carry forward a claim of his own ineffectiveness into this court in order to protect Mr. Mays' rights in the event this Court were to agree with the Texas court that the charge error was not properly preserved for review on direct appeal.
10. Movant suggests that the circumstances described above present a potential for a conflict of interest between himself and his client that might become real later in these proceedings.

11. Movant suggests that Mr. Mays' interest in the assistance of conflict free counsel requires that other counsel be appointed him the place and stead of Movant.
  12. Movant prays the Court to grant this motion and to appoint other counsel to replace him in this case.

Respectfully submitted,

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### Court-Appointed Attorney for the Petitioner

## CERTIFICATE OF CONFERENCE

I certify I communicated with Attorney General's office, who indicated that he did not wish to take a position upon the withdrawal of counsel.

John E. Wright

## CERTIFICATE OF SERVICE

This is to certify that on March 30, 2011, a true and correct copy of the above and foregoing document was served on the following parties, by electronic document transfer, U.S. regular mail or hand delivery.

Leslie K Kuykendall  
Texas State Attorney General's Office  
Postconviction Litigation Division  
P.O. Box 12548, Capitol Station  
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JOHN E. WRIGHT